

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET- SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

DOCKET NO.: CAA-08-2005-0003

IN THE MATTER OF:)	
)	
KOSMA HEATING, AIR)	FINAL ORDER
CONDITIONING, & ROOFING, INC.)	
Sheridan, WY)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

December 8, 2004
DATE

SIGNED
Alfred C. Smith
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

Docket No. CAA-08-2005-0003

IN THE MATTER OF:

Kosma Heating, Air
Conditioning, &
Roofing Inc.
Sheridan, Wyoming

Respondent

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency,
Region 8 ("EPA"), and Respondent Kosma Heating, Air Conditioning,
& Roofing Inc. ("Respondent"), by their undersigned
representatives, hereby consent and agree as follows:

I. **Authority**

1. This matter is subject to 40 C.F.R. Part 22. This combined Complaint and Consent Agreement ("Consent Agreement") is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

2. EPA has jurisdiction over this matter pursuant to section 113(d)(1)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d)(1)(B), as amended on November 15, 1990.

II. Background

3. This is an administrative action brought for civil penalties pursuant to section 113 of the CAA, 42 U.S.C. § 7413, regarding Respondent's violation of the "National Recycling and Emission Reduction Program" of the CAA, 42 U.S.C. § 7671g and 40 C.F.R. §82.162 for failing to complete and submit to EPA required refrigerant recovery or recycling device acquisition certification forms and of section 114(a) of the CAA, 42 U.S.C. §7414(a) for failing to provide complete information in response to an EPA information request.

4. Respondent admits that EPA has jurisdiction over this matter and neither admits nor denies the specific factual allegations nor the specific violations alleged herein.

5. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement.

6. EPA asserts that settlement of this matter is in the public interest, and EPA and Respondent agree that this Consent Agreement is the most appropriate means of resolving this matter.

7. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter

Respondent's responsibilities under this agreement.

8. This Consent Agreement contains all terms of the settlement agreed to by the parties.

9. Kosma Heating, Air Conditioning, & Roofing Inc. is a company which installs and repairs air conditioning units, is located at 529 North Main Street, Sheridan, Wyoming 82801, is a Wyoming corporation and therefore a "person" as defined in section 7602(e) of the CAA, 42. U.S.C. § 7602.

III. **Violations**

10. On March 24, 1993, Respondent purchased Katy 3330TB refrigerant recovery equipment.

11. On June 14, 2002, Respondent purchased Promax Amprobe RG5410hp refrigerant recovery equipment.

12. EPA alleges that Respondent violated section 42 U.S.C. §7671g and 40 C.F.R. §82.162 for failing to complete and submit to EPA a Refrigerant Recovery or Recycling Device Acquisition Certification form from August 12, 1993 until November 8, 2004 regarding the Katy 3330TB refrigerant recovery equipment and from July 5, 2002 until November 8, 2004 regarding the Promax Amprobe RG5410hp refrigerant recovery equipment. November 8, 2004 is the date EPA received the completed forms from Respondent.

13. On November 27, 2002, EPA sent to Respondent a CAA section 114 information request which was responded to and submitted to EPA in a package dated December 23, 2002 and

certified by Joe Kosma, Jr., Respondent's Vice President as being complete and accurate.

14. EPA alleges that Respondent violated section 114(a) of the CAA, 42 U.S.C. §7414(a) for failing to provide complete information in response to the EPA information request identified in paragraph 13, above. The duration of the alleged violation is from December 23, 2002 to June 17, 2004, the date a second section 114 response was received by EPA from Respondent.

15. Pursuant to section 113(d) (1) (B) of the CAA, 42 U.S.C. § 7413(d) (1) (B), and based in part on an assessment of the penalty factors described in section 113(e) (1), 42 U.S.C. § 7413(e) (1), EPA has determined that an appropriate civil penalty to settle this action is the amount of Two Thousand Five Hundred Dollars (\$2,500). In conjunction with paragraphs 4 and 6 of this Consent Agreement, Respondent agrees to pay the \$2,500 penalty.

16. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if the penalty is not paid when due. Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a

penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) calendar days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).

17. Within thirty calendar days of receipt of the Final Order issued by the Regional Judicial Officer, Respondent shall pay the agreed upon civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

EPA Region 8
Regional Hearing Clerk
P.O. Box 360859M
Pittsburgh, PA 15251.

The check shall reference the Respondent's name and address and the EPA Docket Number of this action. A copy of the check shall be sent simultaneously to:

Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466.

IV. **General Provisions**

18. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

19. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

20. Nothing in this Consent Agreement shall be construed as a waiver by the U.S. EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

21. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.

22. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

23. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this Consent Agreement.

24. This Consent Agreement resolves Respondent's liability for federal civil penalties under sections 113(d) (1) (B) of the

CAA, 42 U.S.C. § 7413(d)(1)(B), for the alleged violations contained in this Consent Agreement. This Consent Agreement shall not in any case affect EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

25. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Consent Agreement.

Kosma Heating, Air Conditioning, & Roofing Inc.

Date: 11-30-04

By: SIGNED

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Date: 12/6/04

By: SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **KOSMA HEATING, AIR, CONDITIONING AND ROOFING, INC., DOCKET NO.: CAA-08-2005-0003** was filed with the Regional Hearing Clerk on December 8, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to James Eppers, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on December 8, 2004, to:

Joe Kosma, Jr.
KOSMA HEATING, AIR, CONDITIONING
AND ROOFING, INC
529 North Main Street
Sheridan, WY 82801

December 8, 2004

SIGNED _____

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON
DECEMBER 8, 2004.**

